

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DORIAN SYKES,

Petitioner,

v.

Criminal No. 03-80028

Civil No. 09-14650

UNITED STATES OF AMERICA,

Respondent.

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**ORDER DENYING PETITIONER'S
MOTION TO VACATE SENTENCE**

Before the court is Petitioner Dorian Sykes's motion to correct sentence pursuant to 28 U.S.C. § 2255, filed November 23, 2009. Petitioner requests a reduction in his criminal history points and a corresponding reduction in his sentence. The government filed a motion to dismiss the petition on February 16, 2010.

On February 5, 2003, Petitioner pleaded guilty to bank robbery, carrying and brandishing a firearm during a crime of violence, and felon in possession of a firearm. The court sentenced Petitioner on February 15, 2005, to a total of 174 months in prison on all counts. The judgment was entered on March 14, 2005. Petitioner filed a notice of appeal, but his appeal was dismissed by the Sixth Circuit for want of prosecution on October 24, 2005.

The government has moved to dismiss Johnson's petition because it is untimely. Pursuant to 28 U.S.C. § 2255, a petitioner has one year from "the date on which the judgment of conviction becomes final" to file his petition. 28 U.S.C. § 2255(f)(1). If no timely appeal is filed, the judgment becomes final within fourteen days after entry. See Sanchez-Castellano v.

United States, 358 F.3d 424, 427 (6th Cir. 2004) (“[W]hen a federal criminal defendant does not appeal to the court of appeals, the judgment becomes final upon the expiration of the period in which the defendant could have appealed to the court of appeals, even when no notice of appeal was filed.”); Fed. R. App. P. 4(b)(1) (time for defendant to file notice of appeal in criminal case is within fourteen days after entry of judgment).

Sykes filed his petition on November 23, 2009, more than four years after the judgment became final. Because his petition is clearly untimely, the court must dismiss it.

ORDER

Accordingly, IT IS HEREBY ORDERED that Petitioner’s motion to correct sentence is DENIED.

IT IS FURTHER ORDERED that the government’s motion to dismiss the petition is GRANTED.

s/John Corbett O’Meara
United States District Judge

Dated: March 24, 2010

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, March 24, 2010, using the ECF system and/or ordinary mail.

s/William Barkholz
Case Manager